EXHIBIT C

82ETSTEA Argument

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MERRILL STEINBERG, et al.,

Plaintiffs,

v. 07 CV 9615 (RPP)

ERICSON LM TELEPHONE CO., et al.,

Defendants.

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New York, N.Y.
February 15, 2008
2:10 p.m.

Before:

HON. ROBERT P. PATTERSON,

District Judge

APPEARANCES

LEBATON SUCHAROW
Attorneys for Movant Ericsson Institutional Investor Group
BY: CHRISTOPHER J. KELLER
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BY: DANIEL J. KRAMER
ANOUCK GIOVANOLA

(Case called)
THE COURT: Who was the first to file?
MR. KELLER: Your Honor, Christopher Keller. I believe that the first filed complaint was filed on behalf of an investor that is probably not represented here because that investor did --
THE COURT: I'm having trouble hearing you.
MR. KELLER: I believe that the first filed complaint was filed by an investor that is not currently represented here today.

THE COURT: I know that. Who filed for lead counsel?
MR. KELLER: We filed on the same date, your Honor.
THE COURT: Okay. Well, do you want to go first?
MR. KELLER: That's perfectly fine, your Honor. I would be more than happy to review the pending motions and the standards, et cetera, but if the Court has any specific issues or concerns I would be more than happy to confine my comments initially to them.
THE COURT: Well, I have some concern about multiple plaintiffs.
MR. KELLER: Okay. Well, I think we can all agree that the statute that governs the application of the PSLRA is a federal statute. And we start with the plain language of the statute and the construction of the statute. It specifically provide that the court shall appoint the lead plaintiff movant

the person or group of persons that is most adequate to represent the class. I think since that time there has been a series of efforts made by courts to --
THE COURT: It says person or persons, I don't think that --
MR. KELLER: I believe, your Honor, it's a group of persons. And I think many courts have tried to sort of interpret what group means and they each sort of added a certain gloss.
Just to take you through in a very brief way the development, it was a desire --
THE COURT: Is it a group of persons who were previously or is it a group that is created for purposes of the litigation?
MR. KELLER: Your Honor, in 1999 and 2000 many courts were interpreting group of persons to mean any assemblage of far-flung investors, whether they hold ten shares, a hundred shares; and the aggregation of tens of thousands, if not more, was happening on a regular basis. And the courts -- in an effort to cure that problem, certain courts developed certain sort of limiting criteria. Some courts said you need to have a prelitigation relationship, other courts said you need to have -- if not a prelitigation relationship, you have to demonstrate to the court why you as a group make sense.
That was clearly done in an effort to limit the number

of investors getting together. As far as I know, there is not a single case that applies that to institutional investors. Institutional investors were not the problem in 1999 and 2000. You didn't have hundreds and thousand of institutional investors getting together.
THE COURT: But theoretically the investors are supposed to be the ones who participate in the litigation --
MR. KELLER: By all means.
THE COURT: -- in some way, according to the act, I believe. And you do have this problem of whether they are really going to act as lead plaintiffs or whether counsel is.
MR. KELLER: In connection with the opening motion, my client, the Ericsson Institutional Investor Group is comprised of very sophisticated institutions. Sitting next to me is Daniel Greene. He's the associate executive director of the

Boston Retirement System. It's a $4 million fund in Boston, it's a pension fund. In addition, Fortis Investments, which is a 2 or $300 billion entity --

THE COURT: There's no question that they're big.

MR. KELLER: On that call you had the general counsel of Fortis, you had Daniel Greene himself on the phone, you had the head investments for Lothian and you had a director-level person for Deka. These people are decision makers, they're not being led around by attorneys on the phone. They have all been through the process before. And they specifically decided that

because Ericsson is a multinational corporation with shareholders principally based in the United States and Europe that it makes sense to have the lead plaintiff group reflect the base of shareholders. They talked about how they would oversee this litigation, that they would convene conference calls when necessary to decide issues.

In fact, your Honor, a perfect example in how that benefits the class, one of these investors had been instrumental in assisting us in our investigation. Counsel spent tens of thousands of dollars on behalf of their clients in an investigation so far aided in part by our institutional investors in New York to get information from witnesses on the ground in Sweden. This is a case with international aspects and it's very important, our clients thought, to have that group reflect the larger investor base. They are very used to overseeing counsel.

THE COURT: What sort of investigation are you talking about?

MR. KELLER: Private investigators, your Honor.

THE COURT: That doesn't answer my question. I'm asking about the investigation, not who conducted it.

MR. KELLER: I'm sorry?

THE COURT: I'm asking about the scope of the investigation, the nature of the investigation, not who conducted it.

MR. KELLER: The investigation relates to the allegations in the complaints filed by the Boston Retirement System related to --

THE COURT: I read the complaint. It seemed to me these were public statements and not anything requiring an investigation per se. These statements were made in connection with the incoming reports and statements made to certain analysts. That's my recollection.

MR. KELLER: You're correct, your Honor. At the time the complaints were filed --

THE COURT: So what kind of investigation is necessary?

MR. KELLER: At the time that the complaints were filed the investigation that we had underway had yet to yield more specific information. Since that time they certainly have. We have not filed an amended complaint. We're more than happy to do that to reflect statements of confidential witnesses throughout the world.

THE COURT: I was asking what the investigation consisted of and the nature of it and I haven't gotten an

answer yet.
MR. KELLER: It involved the interview of former employees of Ericsson in connection with -- to support and further support to the allegations of the complaint filed by the Boston Retirement System. And I would be more than happy

to provide your Honor the specifics of what we have been told.
THE COURT: No, I want to know what they did.
MR. KELLER: These institutional investors are very used to controlling counsel. And I assure you, your Honor, we certainly don't tell the general counsel of Fortis Investments what to do.
However, as it turned out it's really not an issue in this case. Every one of the institutional investors here have a larger loss than Mr. Furher. So whether it's an aggregating group or not, most courts are concerned with aggregating losses. Here that's really not an issue. The losses of each member of the group has a larger financial interest than Mr. Furher.
In fact, the SEC has taken the position that the appropriate group interpretation under the federal statute is between three and six investors. Here that falls squarely within the recommended SEC rule.
THE COURT: Is Deka really an investor?
MR. KELLER: Is Deka really an investor?
THE COURT: Or are the funds, individual funds represented by them, the investors, the stockholders?
MR. KELLER: Well, I believe that Deka is acting in a fiduciary capacity on behalf of the funds that have incurred the losses.
THE COURT: Stockholders are actually the individual

funds, aren't they?
MR. KELLER: That would be correct.
THE COURT: So you have got a --
MR. KELLER: There's considerable case law for the support that even when you have separate funds, so long as --
THE COURT: How many funds do they have there?
MR. KELLER: How many funds is included within the Deka --
THE COURT: No, how many separate funds are involved?
MR. KELLER: Your Honor, there is clearly multiple. I could count for you, but I mean your Honor --
THE COURT: Just offhand how many?
MR. KELLER: Probably ten funds.
THE COURT: Or more.
MR. KELLER: Or more.
THE COURT: Quite a few more. I just don't feel comfortable with this conglomeration of plaintiffs being, for whatever reason, coming together and seeking to be lead counsel.
MR. KELLER: Certainly in the case of the Lothian fund and the Boston Retirement System, those are garden variety pension funds. They are the owners of those securities. They don't represent far-flung funds. They are the prototypical institutional investor that, by the way, the PSLRA said we want institutions to step forward. These institutions should not be

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penalized because they chose to do it together. They chose to do it together because they want to work the case together. They chose to do it together because they believe they can control counsel and have a greater effect on this case with the international implications.

There is nothing that -- there's no reason why they should have beforehand had the foresight to say we shouldn't come together. The statute says they can come together, the SEC says they can come together. They, as seasoned executives, have said we're going to come together because we think it makes sense. Why give defendants one plaintiff to shoot at? Let them shoot at four institutions. Even if they were to knock one out on some argument later in the case, there is still three that remain.

If your Honor, however, believes that only one investor would be appropriate, or two investors, then it certainly could make that decision, but they shouldn't be penalized.

THE COURT: It's a little hard to tell whether they are willing to act alone or whether they're so joined at the hip that they all want to act together.

MR. KELLER: I can make the representation that they understood the risks, they understand the law. Each of them would be more than willing to stand on their own if the Court so chose. However, they did choose, and I think that it was a

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benefit to the group, and they are putting considerable effort and time into that process. And I will say that there's a certain -- and I understand the Court's concern and certainly other courts have had a similar concern.

I don't think there's a single instance in which a court has rejected a group, small group of institutions that have demonstrated to the court in the form of a joint declaration beforehand before they moved and has excluded them, I don't think there's a single court that has done that, and I think it's been presented to hundreds of courts.

MR. MURRAY: Your Honor, could I address that point for one second?

THE COURT: Let him finish his argument.

MR. MURRAY: Certainly.

MR. KELLER: And your Honor, besides addressing the merits, Mr. Furher himself is a member of a four-person or three-person group serving as lead plaintiff in a different case in California. The Murray, Frank firm has moved 16 times with groups within the last four years. In fact, they currently represent Deka, this client, in a case in which Deka is in a group in another jurisdiction. That they're raising this issue is in fact bizarre.

THE COURT: Well, I gather that the judges have differences in their approach to this. Just, for some reason, maybe it's because I had to attend partners' meetings or maybe

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even judges' meetings and everyone has a different opinion,

they're not -- it's awful hard to get sometimes even a consensus. My father used to say that you know what a committee was when it was originated, it was one person, there was a committer and a committee, and that was the way it originated. And then because people didn't want to take responsibility for the decision alone then they said: Can't we have someone else help us? So instead of getting decisive decisions and what have you and someone moving the case along, everyone has to meet together and talk together and people have other things to do and things don't get done. That's kind of my reaction about three or four plaintiffs and different institutions taking on lead plaintiff status. But that's my hunch, I'm not saying that you're not entitled to do it.

Then the next question that arises: What about counsel? Are they going to be more -- is one client going to matter more to them than another client in this group? Have they got a conflict in some way because they represent these large institutions which must be very valuable for purposes of litigation and class?

MR. KELLER: We make it very clear to our clients during the pendency of these cases we look out for -- we are fiduciary to the class as well, and we recommend decisions that are in the best interests of everyone. And one of the requirements, in fact, of Rule 23 is that the claims of all

class members, and certainly the lead plaintiffs, are typical of other class members' claims. There is not a conflict amongst them. They all have the same claims. They all profess the same theories based upon the same facts and they're professing similar damage theories. So at least at this point --

THE COURT: Has any court ever claimed there was conflicts on the part of counsel when they represent big clients like Deka and Fortis and Lothian?

MR. KELLER: Not that I'm aware of, your Honor.

THE COURT: No cases on that?

MR. KELLER: Not that I'm aware of. The only thing I could analogize it to, it's certainly not identical, is there were certain challenges made to lead plaintiffs, this goes back to the late '90s, that were institutional investors and they continued to hold large amounts of stock in the defendant corporation when some others had sold, and the allegation was that well, you're a large company and you hold five million shares, you want to see something else happen to the case than others may want to see.

And ultimately the courts said while that may give rise to some conflict, the PSLRA wanted institutions to step forward. And by asking institutions to step forward, along with that comes an understanding that with institutional investors you're not getting individual investors, you're

getting institutions with general counsel's offices, with investment managers with mutual funds. This is what you're getting when you get institutions and this is what they wanted.

So I guess the short answer would be, your Honor, to the extent that the clients of our firm -- and all four of these clients have been clients in other cases are important,

it doesn't present a conflict nor would it present a conflict in the operation of this case.

THE COURT: Any other issues you want to address?

MR. KELLER: With respect to the PSLRA it's a very straightforward statute, as your Honor knows. Your Honor has presided over other PSLRA cases. It is a really a two- or three-part test, and the first test is simply to identify which movant professes the largest financial interest in the case. By all estimations the Ericsson Institutional Investor Group possesses an interest far larger than Mr. Furher.

THE COURT: Then I guess you have this issue, which I guess shouldn't be addressed now, but you have this issue about whether the extended class period extended by the plaintiff complaints in the original complaint is something that is lawyer driven or fact driven. Because I don't see from reading the complaint, frankly, that there's any showing of intentional misstatements in the early quarters, nor do I see any reckless statements in the early quarters from reading the complaint. So at that point I begin to wonder whether class has been --

the class period hasn't been raised. But that's something that it seems to me comes up in the next stage of the proceedings as opposed to here.

MR. KELLER: I would agree with your Honor. I think that to the extent that the complaint contains allegations even within the short period, your Honor, if I may be frank, that what it does is compare earlier statements with later statements. So the shorter class period is the two-month class period, and one would I guess presume that a statement made and two months later a counter statement that is made and is drastically different one can presume that it is made with a certain level of knowledge. Although as you extend it out more it's not as though the facts within that shorter period somehow demonstrate a strong knowledge, what they really go at is recklessness. And it's our view that the recklessness goes back until February. And in the complaint what we make are a series of allegations where Ericsson began to deviate from its competitors. Its competitors are saying things are slowing --

THE COURT: And also said that the competitors are smaller and they were saying, as I understood, that the competitors were losing and they thought they were gaining.

MR. KELLER: Well, even their largest competitors claim that they had -- they were uniquely positioned to take advantage of certain changes in the marketplace, and during that time certain mergers they were doing were closing, which,

as your Honor is aware, is evidence of a certain motive to keep a stock price propped up. And ultimately they were not uniquely positioned to do anything other than suffer the same fate as all of their competitors. But as your Honor correctly points out, as your Honor found in the gaming lottery matter --

THE COURT: It was a mess.

MR. KELLER: It was a mess.

THE COURT: And a loser for all the lawyers concerned.

MR. KELLER: There was a request made to shorten the class period, and your Honor found that was more of a merits issue and one that should be ferreted out at a later date.

I would be more than happy, if your Honor is at all curious as to more facts that we have to support that longer class period, I would be happy to provide your Honor with an in camera review of reports that we have generated internally that greatly supports a longer class period.

In fact, they have not -- Mr. Furher, although arguing for shorter class period, has done two things that the Court should be aware of. One, although he argues for a shorter class period, he hasn't even provided the financial transactions for a longer class period, which raises an issue. Number two, although they argued for a shorter class period, they never challenged the merits of longer class period. And number three, all of the cases out there say that you go with the longer class period.

The one case Mr. Furher cites, the Piven case out of Florida, and to put it very charitably, overstates its holding, he cites it for the proposition that the Court must accept and utilize the stated class period, its first filed complaint, for the purpose of determining lead plaintiff. It absolutely positively does not say that. In fact what it says is it ends up using the longest class period. And it's a contest taken out of context, and I encourage the Court to review that.

THE COURT: Well, the other question is what about the res judicata effect with respect to these plaintiffs.

MR. KELLER: The res judicata effect is a fairly new issue that courts are beginning to grapple with, as your Honor is well aware.

THE COURT: You all brought those opinions to my attention, one by Judge Stanton.

MR. KELLER: Correct. In the gaming lottery matter your Honor certified a class that had both Canadian and U.S. residents without recognizing probably at some point, although the early opinion may not be published, that that's an issue, if at all, that affects the class. Either they're in or they're out. And it's certainly not unique issue.

The Second Circuit in 1975, the name of the case escapes me, came up with the standard that said we're going to allow the class to be certified broadly unless someone demonstrates with a certainty that another jurisdiction will

not enforce that judgment. Certainly given that it's their burden to establish certain unique defense, as your Honor is familiar, under PSLRA once you demonstrate the largest financial interest and you meet the adequacy of typicality at least on a preliminary basis you're entitled to a presumption, and it's up to the completing movants to rebut that. They haven't offered any record evidence to support that the law in any of the countries that have been implicated in this case, Germany, Belgium and the U.K.

THE COURT: I thought Judge Stanton indicated that in his opinion that all but the U.K. were probably not claims that were a determination by this Court if it was a determination of non-liability.

MR. KELLER: I think you're right. I think that's exactly what Judge Stanton said. I think that Judge Stanton disagreed with the Second Circuit and did not apply a near

certainty standard. And in fact the Court was very frank by not applying a non-certainty standard because he found it unworkable and came up with a new standard which was more likely than not. Under that standard he found that, as your Honor correctly notes, that most countries, at least before him at that time, Germany in particular, was more likely than not that it wouldn't be enforced.

But there was record evidence, your Honor, on both sides. That there was affidavits given that -- different

affidavits, different professors could come forward now and say it's my opinion that it was more likely that it would be enforced. The affidavit in fact was being utilized in the Glaxo case, which was the Stanton case from an earlier case in 2003 involving Daimler Chrysler. Who knows, maybe the law changed in 2003. It's a fact-dependant analysis and also involves analysis of the law as it develops.

However, I would say to your Honor the res judicata issue is really not an issue that needs to be decided at this point because you have Boston, which is clearly a U.S. purchaser, standing before you. And I think it's sort of unclear, it's quite opaque from the moving papers of Mr. Furher where he resides. We have evidence from the Oracle case that he resides in Belgium. We have not had that confirmed. It's certainly -- I have a deposition transcript here, I would be more than happy to provide it the Court, but we think he's a Belgian resident, which is the same country as Fortis. So the only --

THE COURT: Same country as what?

MR. KELLER: Fortis investments.

So perhaps the only resident before your Honor that is a U.S. citizen in corporate entity is Boston Retirement System. But I will say that Judge Stanton's opinion does stand in the minority. Recently Judge Chin issued a decision, GPC Biotech, in which he found that the res judicata was a issue not to be

decided at the lead plaintiff stage saying it's more of a merits issue and it requires a full analysis of the law of all the various countries involved and something that the courts should be doing at the point of lead plaintiff. We agree with Judge Chin. In fact, counsel representing Mr. Furher represented the Pay Low Fund and then they were out of Czech Republic, and this is 2007 before Judge Cote, and they were appointed.

And to the extent that they raised this issue, it's also slightly odd given that their opening motion papers portended to represent all purchasers wherever they may reside, and I really don't know exactly how they have reformed that. They haven't really necessarily been clear.

THE COURT: In this case where were the purchasers made? Are all these European institutions buying them in Europe?

MR. KELLER: That's correct, your Honor.

THE COURT: So none, except for --

MR. KELLER: Except for Boston, of course.

THE COURT: Boston would have been the only trades that were affected here in the United States.

MR. KELLER: That's correct, your Honor. Although that is correct, we believe we will establish that there is subject matter jurisdiction over this suit here.

THE COURT: Of course the markets adjust themselves

immediately wherever the purchases that were made against those; isn't that right?

MR. KELLER: That is correct. Given the mergers among some of the largest exchanges, it's practically a worldwide market. Most courts that have considered this issue, your Honor, to briefly summarize, have allowed foreign institutions to serve as lead plaintiff.

THE COURT: Are the shares designated differently if they're on the European market than if they were on the United States stock exchanges?

MR. KELLER: I believe that if your Honor is referring to whether there is an ADR, whether --

THE COURT: That's what I'm referring to.

MR. KELLER: I'll have my counsel and all correct me if I'm wrong, I believe there is a dual listing but I could be wrong, or it could be also ABRs, I'm not certain.

THE COURT: ABRs are the only ones that can be traded here; right?

MR. KELLER: Unless it's a dualistic company.

THE COURT: ABRs can be traded in Europe. Can they? Are they?

MR. RADO: You Honor, most brokers I know for a fact will allow anybody to buy a stock overseas. Someone can, out of the Ameritrade account in New York, buy an a foreign exchange. I'm not sure why they would do that but they

certainly have the ability to.

THE COURT: I'm sure they can do it one way or another through a broker some sort, but my question was whether -- I was just thinking ahead, I guess.

Anything further?

MR. KELLER: Nothing further, your Honor, unless you have any questions.

THE COURT: I'll hear from opposing counsel.

MR. MURRAY: Thank you, your Honor. My name is Brian Murphy, I represent the movant Jacques Furher.

First I would like answer one of your Honor's questions, how many individual funds does Deka own that are at issue in this case that purchase stock. Mr. McCabe tallied it up while waiting. It's 51 separate funds represented on the certification that purchase stock for Deka.

THE COURT: I thought it was around that.

MR. MURRAY: Second, before I get into my presentation proper, I would like to correct what I'm sure was an inadvertent misstatement by Mr. Keller in which he said he was not aware of any case in which a court had not approved a group of institutional movants and instead took an individual movant.

MR. KELLER: With the joint declaration before the motion, I said.

THE COURT: Could I hear that again?

MR. MURRAY: Yes. Mr. Keller said he was not aware of

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any case in which a group of institutions moved together and were not allowed to do so if they had a joint declaration before the motion; which I didn't hear him say that but I'll take his word for it.

With that caveat maybe there is not, but certainly there is a case here in this district before Judge Berman in which a group of institutional plaintiffs moved together, one of which was Fortis, with three other movants, aggregated their losses and claimed they had a larger collective loss than a single institutional movant, who, coincidentally, was Deka in that case. Deka argued successfully before Judge Berman that those four movants, one of which was Fortis, should not be allowed to aggregate their losses together and overcome the single loss of Deka. So certainly in this very courthouse we have a judge saying he's not going to allow institutions to band together and aggregate the losses.

Now Mr. Keller added the caveat when I started this saying with the joint declaration before they moved. I know they had a joint declaration at some point in there, I don't know when it was. If he is making that statement it must be after the motion was initially made.

That brings me to the joint declaration at issue in this case which was made in connection with the initial motion. The conference call was held before the motion was made. But there's something curiously missing from the joint declaration,

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and that is why those four institutions got on the conference call at all, your Honor. What made them get together and say: Hey, this might be a good idea, do you want to come in with me? Let's go halves, let's go quarters, let's form a group and move in this case.

And there's nothing in that declaration that says that Mr. Greene knew anybody at Fortis, had ever met anybody at Fortis, called him up on the phone and said: Hey, Mr. Fortis, I got a loss, did you lose anything? Let's get together. And I don't think that happened. And Mr. Greene can tell you if it did, he's right here, but I would wager almost everything that that conference call was at the instigation of counsel, the counsel that represents him in this case. Obviously, that was counsel's idea to get the four institutions together. And more than anything that makes it obvious that it's a lawyer-driven group. And that's the whole point of not allowing people to aggregate.

I have seen groups where it's husband and wife, father and son, obviously a family, me and my brother-in-law, whatever, something like that. But the strong trend in this district, especially strong recently in light of what Judge McMahon just said when she threw out everybody in the moving group and she said, I don't know if three or four people that moved together -- the Piskolis case or something like that, it's cited in our papers -- but Judge McMahon said you four

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people, you moved together. Individually one of you may have the greatest loss, but since you moved together as a group I'm

throwing all of you out collectively and individually. The mere fact that you move as a group together, that makes you no good.

And certainly Mr. Keller said -- I tried to write it down exactly: No reason to know a group was no good. Well, certainly Fortis and Deka were aware that group in this court was no good because they're on opposite sides of the issue in the GM case; Deka as the individual, Fortis as part of group. That was declared inadequate to overcome the single individual largest loss of the Deka fund. So that leaves us with looking at everybody individually. The threshold issue then --

THE COURT: Did either Judge Berman or Judge McMahon give their reasons, any authority?

MR. KELLER: Your Honor, I believe in the General Motors case the ruling Judge Berman made was in fact supported by most courts that you are not allowed to aggregate losses over the largest individual movant, whether it's an institution or not. In other words, you can't have three institutions that each have a $3 million loss and overtake an institution alone that has $8 million, which was I believe the facts of the GM case where Deka had a loss of 24 or $22 million and the three institutions together had a loss of 28 but no alone had more than I think 12.

THE COURT: He just did it on a calculation based on facts before him.

MR. KELLER: Correct. In the other case -- did you have a question beyond that one case?

THE COURT: I'm sure it was based on the law in some way.

MR. KELLER: And I believe the Judge McMahon decision -- I'm sorry I'll let him continue. I'll continue when he's completed.

MR. MURRAY: Well, they relied in part on other cases, like the trend in this district which we have cited the case in our brief that judges like to go with the largest individual. And I think one of the reasons is for the reason you raised while Mr. Keller was speaking, that groups are unwieldy, it's hard to get them move together. For the obvious reasons why groups are no good I think is why the judges have moved in that direction.

So if we look individually, now we're back to the second issue that you raised, the long period -- the initial class period versus the extended class period. Your Honor, the initial complaint in this case was not filed by my firm, it was not filed by Mr. Keller's firm, it was filed by the Coughlin firm, who has not moved in this case. Presumably they filed the best complaint they could with the longest class period based on facts available to them and did the best job they

could.

THE COURT: Maybe they raced to the courthouse.

MR. MURRAY: Or that, I can't speak to that. But either way they put forth a class period which they felt was the proper class period for that case. The problem is if you don't chose the initial class period when you are deciding the lead plaintiff motion it raises all sorts of problems that the

PSLRA was supposed to solve. You're not supposed to have gamesmanship and jockeying, you're simply supposed to have someone come forward with the largest interest in the case that wants to represent the class and lead the case.

If people do come forward and say Mr. Coughlin -- I know it wasn't him personally, but the Coughlin firm filed a complaint with the class period of A to B. Well, if that's the class period, I don't like it, so I'm going to do my own case and file a class period pre-A to B. Now we have a lot of losses, I could be in the case.

It didn't happen in this case because apparently there's not much interest other than the movants, but quite often I'm sure you have seen cases where there's 40 complaints filed and 50 notices put out. If it's not the first class period basically you're going to have a free for all, everybody will file a complaint for whatever class period suits them and come forth before the Court and say I know the first class period was three months but I want a three-year class period

and I lost a lot of money in the three years and I want to lead the case. And next guy says three years, now we got Sarbanes-Oxley, five years, I want a five-year class period, I lost a lot of money over the five years. It frankly, your Honor, will go beyond if you're not going with the first class period.

And the cases we cite and the cases they cite all go to the same point: This Court should not get involved in making a merits determination at this point. And really the only way to avoid making a merits determination is to go with the purest class period you can, and that's the first one, because that's presumably not the result of a strategic advantage of what people thought the case would be.

Another problem that you will have if you don't go with the first class period is the problem with the notice. I'll call him Mr. Primo since he's first; he failed his complaint, he puts out his notice, the class period is from A to B. That goes over the news wires, it's picked up by all services, everybody is sitting there saying what happened to my stock today, they check the stories, class action filed against ABC Co. for class period A to B. They look at it, A to B, I lost money, I didn't lose money, they make a decision. Maybe they say I lost money outside the class period and make some other decisions as well, maybe they want to call a lawyer.

The problem is there is many, many notices filed in

those cases, many firms file, they open up the notice, people are going to be swamped with notices, 50, 100 notices put out in those 60 days by different firms if it's all different class periods. And people frankly are not reading all the notices, they read the first one, the second one comes up, second class action filed, it's human nature, you say I know, I saw that last week, you're not going to read the second notice and see it as a different class period. Most people will be working off the initial class period and make a determination.

THE COURT: What law is it that I shouldn't make my decision on that basis?

MR. MURRAY: I'm sorry?

THE COURT: What law of the Second Circuit or what law is it that I should not make my decision on that basis?

MR. MURRAY: On which basis?

THE COURT: On the first complaint.

MR. MURRAY: Certainly nothing from the Second Circuit that I'm aware of. I'm not aware that they ruled on the issue one way or the other. It's not an issue that -- there's not that many cases. Between the two of us I think we cited five that discuss the issue and none of them are circuit cases. It's not something that -- nor would it go up, as lead plaintiff decisions are not really the subject of appellate decisions. So I think the bottom line is as far as, quote, the law is concerned, you can do whatever you think is right in

this case based on policy and the statute.

So long or short. I'll take the short class period first. I disagree that each of the four movants in the other group has a larger loss than Mr. Furher individually when you look -- compare each one to one with Mr. Furher. Starting with the short class period, Lothian has losses of a little more than half a million. Fortis has losses of a thousand plus change. Boston has absolutely nothing. They didn't get involved one way or the other with the short class period. And then we have Deka which does have a substantial over $4 million loss in the short period.

In the long period -- oh, sorry, I have to preface all this. There is another determination that you must make, LIFO versus FIFO; if you're going to use last in, first out or first in, first out. And again I think the cases strongly support the use of the last in, first out. And the reason is quite obvious. First in, first out means that you buy something before then you buy something in the class period. Let's pretend that never happened. And what possible reason could there be for that, to pretend this sale never happened, a sale within the class period, a sale in which you benefit by the fraud? Because you're getting the advantage of inflation. To adopt a methodology that just ignores that because it doesn't happen makes no sense, and I think that's what the majority of the cases hold. And certainly the trend is very strong

recently going to LIFO. So all the numbers that I gave you were under a LIFO analysis.

If you look at the long class period, Mr. Furher still has greater losses than two of the four movants. If you look at them individually, Lothian goes up to a 5 to $6 million, closer to a $6 million loss under the long period, LIFO. Fortis still only has fewer than $40,000 in losses. Deka is now up to only 10 million, and Boston is still under 700,000. So Mr. Furher with a million dollars is greater than two out of four.

So that then leaves us with Lothian and Deka and the points that you were sparring with Mr. Keller about with regard to the res judicata issues addressed to recent cases. And let me make it clear: At no point did we argue in our papers or am I arguing now that you have no subject matter jurisdiction over those entities, that they should not be part of the class. Obviously as class counsel we would do everything we could to

get them included. Why wouldn't we? They're the people we represent, we make every argument possible.

But the problem is those arguments might not work. And if they don't work, there's a big problem. Because let's say you appoint I think one of the two, Lothian was the top of my list, you appoint Lothian as the individual with the largest loss, they're the lead plaintiff, we get over the motion to dismiss, the case is going merrily along, we get the class

cert, all the sudden you make a determination I'm not going include those people, I don't have subject matter jurisdiction, there's no res judicata, whatever reason, they're thrown out.

At that point, your Honor, I speak from experience, it's mayhem. What happens at that point is every plaintiff's firm in the United States wakes up and says Lothian's out, maybe I can get in. The motions start flying. And you'll get one saying a new notice must be published, a new 60 days, then we'll have the motions made and let's see what happens. I have seen it happen. It happened in the Williams case in Oklahoma. It holds things up for months. It's ridiculous. And like I said, I'm not saying that they're definitely out. I don't want them to be out, I want them to be in, but there's a chance they may be out. Why take that chance? There's to reason to.

THE COURT: Judge Stanton's opinion, or perhaps I have got the opinions confused, indicates that great Britain probably would give full faith and credit to a determination by this Court.

MR. MURRAY: Yes, I do believe that's what the opinion said. There are arguments that could be made that they still would not though. And like I said, there's no reason to take the chance. When I say there is no reason, there is no reason. Mr. Furher, as Mr. Keller has --

THE COURT: Why is Mr. Furher in the same boat?

MR. MURRAY: Mr. Furher is Belgian, as their

investigation discovered. However, Mr. Furher made all of his purchases in the United States on United States exchanges. And for one simple reason, and we asked him when talking to him: Why would you purchase here instead of over there? Isn't it easier to purchase over there? And he said yes, it is. He said, however, everything I have seen in the last few years Enron, Worldcom, the complete messes we have had here in Europe Parmalot, Royal Dutch, he says I have very little confidence in what is going on, and if I purchase in Europe I don't get protection if fraud is committed against me when I buy a stock.

He buys in the United States so he gets the protection of United States securities laws. He pays a premium for that protection because he told me today at lunch he's got to pay commission to the guy in Belgium and he's got to pay double commission to pay someone in the United States to execute the trade. So he is paying double commissions. But he is doing that specifically so he gets the protection of the U.S. security laws. And without a doubt a foreigner who purchases here in the United States is certainly entitled the protection of the U.S. securities laws and you're not going to get tossed out at a class certification stage.

THE COURT: What about the fact that most of his

purchases are puts or calls? Calls, I guess.
MR. MURRAY: What about it? He bought of those options in reliance on the fact that the price that all those

options was based on was fair. Whether the stock price was here or here, that goes into the calculation of what the option is going to be. Obviously, those purchases made at the end all the sudden turns out fraud was committed, the stock plummets, he's left holding the bag and gets all the stock put to him. He's relying on the integrity of the markets like everyone else is. And I don't think there's aid case that I'm aware of, with a caveat --
THE COURT: I think he is eligible, but doesn't that diminish his loss?
MR. MURRAY: It may diminish it but it's still a million dollars. Even at a diminished stage he definitely lost a million dollars on these trades. And other than the 8th Circuit where it may have been decided -- although I know it was an open issue at least a decade ago -- options purchasers have standing and are treated just like stock brokers in every other circuit in the United States.
Here in the Second Circuit --
THE COURT: It's just I was thinking his losses would likely to be less, but maybe just because I'm thinking in terms of calls, not puts.
MR. MURRAY: Your Honor, he was selling the puts, not buying the puts. And when the stock went down the stock was put to him and he suffered an extremely serious loss, a million dollar loss. I really don't think it's of any moment that his

purchases are in options rather than stocks. He relied on the market like any other serious purchaser did.
THE COURT: I didn't examine his trades, I just looked at the category, and it seemed to me the category of trades would not be likely to create a lot of losses. But I guess if he had to buy, buying puts gets a little -- is it buying puts that he was doing?
MR. MURRAY: No, he was selling puts.
THE COURT: Selling puts. It's a little esoteric for me.
MR. MURRAY: Mr. McCabe from my firm.
MR. McCABE: When you write a put or sell a put, what you are selling is the ability for someone to sell stock to you. So if I sell a put say January 2009, put it's got a strike price, it's got a premium, I get a premium, $1.50, $2, and the person that buys the put has the right to sell me the stock at the strike price at any time up until January. And there are certain things that can happen in January that will force the transaction, but what I have done is sold someone the right to sell me the stock at a certain price.
MR. MURRAY: So what I meant is at the end of the class period when the stock plummeted --
THE COURT: It was put to him.
MR. MURRAY: And he's buying stock at 40 and it's out in the market at 20.

THE COURT: Well, my understanding -- I don't know that I agree with his investment.

MR. MURRAY: Well, if he had to do it over again he wouldn't do it either.

THE COURT: If he wanted protection from risk by buying over here he might have chosen another vehicle.

MR. MURRAY: Your Honor, he willingly assumed the risk of options trading, he did not assume the risk of being defrauded.

So your Honor, in summary, Mr. Furher who purchased here in the United States clearly has standing. As I said, I would dearly want everybody else to be included in the class as well, and we'll argue strenuously for it if given the opportunity, but there's a chance that won't work. And given the chances that's not going to work, there's no point, no use in appointing someone that has a chance of being thrown out when you have someone who not going to be thrown out, certainly on those grounds.

MR. KELLER: Your Honor, if I can respond to some of the comments.

THE COURT: He isn't done yet. He's still standing.

MR. KELLER: Okay.

MR. MURRAY: Your Honor, I may still be standing but in boxing the term is out on my feet, so I will yield to Mr. Keller.

MR. KELLER: I think I will try to be brief and start with the last issue first because I think it's pretty clear. The concern that the Court will have if it listens to Judge Stanton is a res judicata issue. The res judicata issue is a concern that the foreign jurisdiction courts will not recognize an adverse judgment to the class. So Mr. Furher's citizenship in Belgium is what is important, not where he bought the stock.

Mr. Furher's in Belgium, buys a stock on the U.S. exchange, is part of this class in the United States, summary judgement against the class, goes I don't like that decision, files a case in Belgium, the defendants rush over and say but there was an adverse judgment in the United States and the Belgian court says we don't recognize that. But I bought my stock on the U.S. exchange. So what? What is determinative for the res judicata concern is residency and citizenship.

So what I'm saying is while the purchases and where he bought them may have some impact on the Court's subject matter jurisdiction, it has no impact on res judicata concern. Which I share is ultimately unavailing, but he is in exactly the same boat as Fortis and Deka as being countries that courts have not found that courts in those countries would be more likely to enforce U.S. judgment.

As your Honor correctly notes, that excludes the U.K. Lothian is the U.K. So even courts that looked at and pored over the expert affidavits, they found certainly Lothian at the

very least. And I submit that it is a factual determination that the Court does not have a record before it to determine.

And as it relates to the PSLRA concern what it is is

they're raising the quote, unquote, unique defense, which is not unique, and two, they made no record. It's their burden. The Court doesn't have the facts before it, doesn't have the expert affidavits, doesn't have the analysis of the courts of Belgium and Czechoslovakia and France and Italy and how they will consider a U.S. judgment. It simply doesn't have that at this time. Moreover, there is at the very at least two of its members, Lothian and Boston, that had been vetted by other courts; Lothian certainly in the case of the U.K. and Boston because it's the most prototypical U.S. investor that one can find.

I want to touch briefly -- and I promise I won't go into what a put option is because frankly I'm a little at sea with your Honor. It's a little bit esoteric. But as I understand it, when you sell a put, you are a seller of a security, not a buyer, you're a seller. When you buy is when you are forced to buy because someone can make money by making you buy at a price of 45 even though the stock is selling at 20.

So as your Honor found in the lottery gaming case, market efficiency and fraud on the market and the presumption of reliance, the keystone of that is that you buy like everyone

else. But he wasn't buying like everyone else, he was buying because he had to buy. I will give him that the put option when he sold he certainly didn't have inside information, but when he bought he wasn't buying because he wanted to buy, he was buying because someone forced him to buy. Whether ultimately he will be unable to recover, I don't know. I do know one thing, that competent defense counsel behind me will raise that issue at his deposition and turn it inside out and make a motion that he has no losses.

But let's assume you carve out those losses. His losses are a half million dollars. And as far as a million dollars goes, we have gone through this in the papers, we have very smart people that pored over his trade records for tens of hours and could not possibly replicate how they arrived at $1,080,000. They could not for the life of them. The best they were able to come up with was a loss of $760,000, which is far below Boston's loss of over a million dollars at bottom. So all members of the Ericsson group surpass him in terms of financial interest.

With respect to -- I believe, your Honor, we have argued considerably about the length of the class period, but if I can make one final note, it's been argued that --

THE COURT: Is there any cases that say just because you are forced, because you have puts to you that you sold the right for them to put the stock to you or you purchased the

right, I guess? Maybe I'm not sure --

MR. MURRAY: He sold the right.

MR. McCABE: He sold the right, your Honor.

THE COURT: That isn't -- that loss isn't engendered by the market?

MR. KELLER: There are some cases that have looked at options investors uniquely. I know there are cases that say you cannot have only an options purchaser representing a class

of all security holders. But I also know there are courts out there that said that a buyer of a call relies on the same market integrity. I have never read a decision that involves, to my knowledge, the seller of a put with forced stock purchases back because the buying decision of the stock is not based upon reliance of the market. The buying decision is the contractual obligation you have made that you will buy that stock at a later date. The only investment decision you made is the put decision.

THE COURT: Based on market forces.

MR. KELLER: Granted, your Honor. I can give you that. All I could say is there are technical reasons, I think, why strong arguments or at least arguments could be made that someone that ultimately buys that stock back is no longer making an investment decision when they buy it and therefore the losses associated with the purchase should not be calculated.

THE COURT: Well, all right.

MR. KELLER: Just to tough briefly on the short versus long class period, I think your Honor has heard that there are no cases that support opposing counsel's view. The only cases that exist, and there may behalf a dozen, nine, something, they all support the notion that you go with the longest class period. The lead plaintiff stage is not the time in which we're going to be having a full-blown hearing on the merits to determine whether there is a basis or there isn't a basis. But I will say this: It doesn't mean you can't use common sense. If someone comes before your Honor and argues for a five-year class period when there is not a fact in the complaint that is even remotely related to any scheme or any allegations, I think your Honor is then free to do what your Honor deems to be right.

In fact, the judge in United Health when the class period was so long there was a period of time where the stock price was below the price at which the stock dropped to, he said it's impossible, they cannot have damages. You can't have damages. So we're going to lop off that class period. But as it relates to this case, the facts as alleged in complaint certainly have basis.

As I mention, I will be more than happy to provide your Honor an in camera review of the results of our investigation which absolutely uncategorically support that

class period. And the danger, the slippery slope argument that counsel had made regarding people adjusting the class period, et cetera, people would be rushing file the first complaint so they can stay with the class period, there would be a new renewed race to the courthouse because you know if you filed the first complaint you get to pick what it is. And people would rush to say I'm going to be first because I'm going to say it's a two-month class period, a two-week class period. Why? Because I have an investor who bought 10,000 shares last week and if I make it a two-week class period I guaranteed myself this case and a year down the road I will extend it, allowing other complaints to be provided, so long as notice is provided, they were aware of it clearly. The certification

that they received from Mr. Furher was on I believe the date the motions were due, although it's signed weeks earlier.

So in terms of the parade of horribles, I have just laid out a real horrible, and precisely what the PSLRA was meant to avoid, which is to get rid of the race to the courthouse. And to answer Mr. Murray's challenge, every one of these clients are clients of the firm. We advised them on a regular basis of all new filings. They contact us, and we as a matter of course advise them of other clients that are interested in it and they decide to go together. We do not tell these institutions what to do, I assure you.

THE COURT: Well, I'm not sure that's the response to

the argument about how they got joined.

MR. KELLER: It's really argument about a prelitigation relationship, which, by the way, doesn't apply to institutions as a logical matter.

THE COURT: Just because you have clients who booked you on a regular basis, it seems to me, if I understood you correctly, that when one of these comes up you advise them of other clients who have similar interests.

MR. KELLER: Well, we certainly don't do that without asking.

THE COURT: Then they agree to go along with the other clients at your suggestion.

MR. KELLER: It sounds like a decision they have made.

THE COURT: First they have to make a decision, but that doesn't mean it isn't lawyer generated.

MR. KELLER: I think the fear certainly that the courts were attempting to address is where you have an attorney that has multiple individual investors who are unsophisticated in the ways of maybe not the market but certainly of the law, and attorneys get on the phone and say you're going join, you're going join up and we're going to put you together. That does not happen.

The judicial gloss that was put on the group of persons portion of the statute was in an effort -- the prelitigation relationship was an effort to draw some bright

line. Clearly it was meant to individuals. Entities don't necessarily have prelitigation relationships, people have relationships. That was effectively saying that institutions can't have a prelitigation relationship because what does it matter if Fortis and Deka ten years ago had a joint venture but ten years later the people aren't the same?

THE COURT: But I'm thinking of the litigation process and whether really Congress intended that to start a situation where lawyers become clients of a firm for litigation purposes, so to speak, and because of this law which Congress passed are then assembled so that single counsel could represent them or a number of them together and thereby gain control of the suits and get the fees. I'm not sure that is what Congress intended.

MR. KELLER: Your Honor, again, since each member of the Ericsson institutional investor group has far greater financial interest in this case than Mr. Furher, an aggregation really isn't an issue for your Honor. And again, there should be no penalization to those who look at a statute that says

group of persons and say I want to be a group, I think it will help the case, it's a European investor base, it's a U.S. investor base. These are sophisticated folks who have made their own decision to do something. I certainly think that the drafters of the PSLRA would be smiling proudly at this group. It is exactly precisely what they intended when you have general counsels on the phone of some of the largest financial

institutions in the world. I really do believe that, your Honor.

Your Honor, if you have nothing further, thank you.

MR. MURRAY: If I could make a couple of points, about one minute.

THE COURT: Yes.

MR. MURRAY: First, just to finish up that last point, if the drafters of the PSLRA are smiling it's because they're laughing right now, not smiling with happiness at what happened. I think what Mr. Keller said made it clear this is a lawyer-driven group. They called them up and said: Do you want to be part of the group? And I don't think, whether institution or individual, that's what the drafters of the PSLRA had in mind.

But what I really want to talk about is the calculation of Mr. Furher's loss, which is quite simple under our methodology. He sold the put at a certain point. A put has a certain intrinsic value; under water, over water, you can make very simple calculation what it's going to be worth and you're disregarding what the other factors that go into an option, the time, value of money, volatility, et cetera, you say right now it's in the money and based on in the money it's worth X, and that's very simple.

So what we did in this case is look at the value of the put, the price which he sold it on, take the 90-day average

for the PSLRA at the end of the class period, which caps the losses, and look at the difference between what he sold the put at and what the price was at the end of the class period, the 90-day average, and look that intrinsic value of what the put would have of the sales price minus the 90-day average and use that as what his loss would be.

THE COURT: Wait. The puts don't necessarily end at the end of 90 days; right?

MR. MURRAY: No, they don't, but we were trying to find out --

THE COURT: They don't end at the end of the class period either.

MR. MURRAY: Yes, your Honor, but we were trying to find out what the value of that put really should have been. And we used the 90-day average to say the price of stock during the class period should have been X. It was actually way above X where he sold that put, and it was basically the price should have been down here. An even put would have been down at the 90-day average, he was selling his put way up here. He lost all that money between what he sold at and what the true value of the stock was.

THE COURT: I don't know that he did, that's why I'm worried from your description it doesn't sound like he did.

MR. MURRAY: Mr. McCabe knows more about this than me.
MR. McCABE: I'm sorry, I don't mean to interrupt my

colleague, but there are a couple of points that have been made about puts and all this stuff, and it can get a little confusing.

Let's start off with a very simple idea. A put gets priced, it gets priced on a couple of things; its strike price, which is dictated by the market. In other words, in the case of Mr. Furher, Mr. Furher -- writing a put is selling a put -- wrote a January 42 and a half put. What that means is he sold somebody the right to sell him stock at 42 and a half.

THE COURT: In a certain period of time.

MR. McCABE: In a certain period of time, and he gets a premium, and the premium he received was $4.16. That premium recognizes two things; that the market price of the stock at the time he sells the put, plus a timed value of money. In other words, over this period of time we think that the option is worth X, plus a factor for volatility. What does this stock do in a three-month period; does it go up, does it go down, what its market factor is. And when you get that premium, that $4.16, it's supposed to reflect all of that, and it's all based on the current market value of the stock.

So when Mr. Keller says well, I don't know if the fraud on the market theory applies, the put is priced based on the current market price of the stock, it's relied on based on the current market value of the stock. It is simply one of the purest forms of fraud on the market reliance. It is purely

driven by the market. There is no news that affects it except for what is absorbed by the market. When he writes the put he receives the premium.

Now in a number of cases, in a good number of options that Mr. Furher wrote, he would then buy back the option at the end of the class period after the stock had dropped. Once the stocks dropped, Mr. Furher bought back as many of the options as possible to close the class period, often at premiums substantially above that which he received. In some instances -- in the instance of the one I described, the January 42 and a half, he sold 5,000 options. He was able to buy back 500 at $12 and change.

THE COURT: But these puts probably aren't more than 30 days, 60 days out.

MR. McCABE: Yes, the January was puttable up until January of this year, but it can be put -- it's not like a bond where the payment is made at the end. When you sell the right to put, the right to sell exists throughout the life of the option. In other words, if I sell you an option on day one and the option is for 90 days, a person can sell -- if the stock drops at any point in those 90 days the person who holds the option can exercise it against you at any time in those 90 days. So if I sell it on day one and the fraud was disclosed on day two and the stock drops like a rock and goes 40 percent, as in the case of Ericsson, that person --

THE COURT: Not on day one and day two in January.
MR. McCABE: No, January is the day that the option tanks. At that point there's a decision to be made, either the option expires worthless, which means that Mr. Furher has earned his $4.16 and he has no threat of stock being sold to, or the shareholder at that time will, which is what is called a forced exercise. If the stock is -- in the case of a put, if the stock price is below the strike price the exchange automatically sells the stock to Mr. Furher. That was never an issue with Mr. Furher's stocks because all of the exercise dates were beyond the close of the class period.
So Mr. Furher has sold someone the right from the date he wrote the put or sold the put until January to sell him stock in Ericsson at $42.50 per share.
THE COURT: The example you gave me, January of 2006?
MR. McCABE: No, January 2008.
THE COURT: 2007, sorry.
MR. McCABE: No, no, January 2008, sir.
MR. MURRAY: January of this year, last month.
MR. McCABE: So at any point between the time that he sold it in September of 2007 until January -- the last Saturday in January of 2008.
THE COURT: He sold them all in September.
MR. McCABE: He sold them all in -- as Mr. Furher is telling me, the CEO of the company made very positive

statements about the company in September. After he made these positive statements about the company, Mr. Furher wrote or sold all of his options at that point. Some of the options would expire in October, the last Saturday in October, some were in November, some were in January. But what that meant was that at any point between the day he sold the option and the final date, the expiration date of the option, the person who bought the option could sell the stock to him.
THE COURT: My problem was with your beginning date in January.
MR. McCABE: Sorry, your Honor.
MR. MURRAY: Your Honor, Mr. McCabe can go on with the technical aspects forever but I won't let him.
THE COURT: Wait a minute, let's think about it a second. Isn't he in a position during that time to offset -- to do other trading which would offset the losses?
MR. McCABE: You're asking if Mr. Furher was engaging in stock or other options.
THE COURT: The news comes out.
MR. McCABE: The news comes out, the stock drops.
THE COURT: Now isn't he able to balance off his objective losses so that he won't have any further losses? He finally sees the news.
MR. McCABE: No, your Honor. At that point there's a problem. He has two choices, mostly because he's given a

contractual letter, he can either try to buy the option back, in other words, he can buy an option on the open market for the same price, another same strike price. But when he does that, and he did it on a number of occasions, and they're in our

chart, he has to pay a premium for it. And because the stock has dropped so low, his premium in order to buy back the option is substantially higher than the premium he received in the first place.

THE COURT: What about counter bets; not buying it back, but counter bets?

MR. McCABE: At that point, no, because there's a contractual --

THE COURT: Don't you get into the problem of having to look to see what his other trading was?

MR. McCABE: All of his trades in Ericsson are listed. And the only way you can -- there are ways you can hedge initially. In other words, you can do a hundred different options strategies, none of which Mr. Furher engaged in, that will hedge over time. But once you have a drop as substantial as the one in Ericsson, that 40 percent drop, there are two choices you have; buy back the option or you're going to get exercising rights. And in a number of instances Mr. Furher was able to buy back. Again, that's part of his loss calculation, the cost it cost him to buy back the option.

What we didn't include in his calculation was the for

sale, because at that point you get into a lot of other arguments. What we did then was what Mr. Murray described going to the intrinsic value of the options.

MR. MURRAY: Your Honor, the short answer is this is the exact methodology used by Mr. Furher's company to calculate its loss in Oracle, which the Court accepted. Mr. Furher's company was certified with his options purchases, the put sales, same as are at issue here, as a class representative in Oracle. So you asked for a precedent where this was dealt with by a court. Well, there's at least one case where a seller of put options was considered a proper class representative using the exact methodology for figuring losses that we used here.

THE COURT: Thank you.

MR. KELLER: Your Honor, just with respect to the Oracle matter that they raise, my understanding is that was not a contested motion, it was agreed upon; movants moved together and presented to the court with a joint stipulation and the court signed a stipulation. I don't believe it was contested. I don't believe it was challenged. I don't believe it was briefed. I don't believe there's any decision that goes to the merits. If I'm wrong they'll correct me, I'm sure. That's my understanding.

MR. STEINMAYER: Your Honor, this was a contested --

MR. KELLER: Sorry, who are you?

MR. STEINMAYER: It was a contested class cert motion.

MR. KELLER: Sorry, who are you, your name?

MR. STEINMAYER: Randall Steinmayer.

It was a contested cert motion. So at least at the class cert stage it was highly contested. They brought this before the judge and the judge --

MR. KELLER: That's only with respect to whether a put options purchaser can represent a class, not whether his damages were calculated adequately.

MR. MURRAY: Your Honor, I submit it's the exact same

analysis. If he's not acceptable --

MR. KELLER: They certainly haven't made a record, your Honor.

MR. KRAMER: Your Honor, Dan Kramer from Paul, Weiss for the defendants. As we indicated to the Court in January, we don't take any position in this fight for who is going to be lead plaintiff. I simply stand up to indicate that, as both counsel have indicated today, any decision your Honor makes here is obviously very preliminary because there is no record here. As the case moves on we will have a chance to address a lot of these issues and will revisit the subject matter jurisdiction issue.

This is a Swedish company, Swedish defendants, the statements issued out of Sweden, the accounting happened in Sweden, so there will be a record made on the subject matter and whether someone who doesn't bind the U.S. under those

circumstances have subject matter jurisdiction. I think it's a very serious issue for the Court. You heard the res judicata issue, whether some of these plaintiffs if they lose here will be able to get a second bite of the apple in the home country. The res judicata is a very important question for the Court, and I think what all counsel can agree to is we should really try to avoid appointing a lead plaintiff who at some point down the road is going to be found to be inappropriate for one reason or another, because that's just a mess.

THE COURT: Why don't you make an argument for multiple plaintiffs?

MR. KRAMER: Well, the PSLRA and all of the lawyer-driven litigation that your Honor is worried about sort of leans against that.

The only suggestion I'm making, your Honor, is if it would be helpful early in the proceedings to have a proceeding about subject matter jurisdiction but have a proceeding about res judicata so we don't take a step today that gets undone later on, defendants obviously would be willing to accelerate those parts of the case so that we could proceed efficiently here.

So we take no position today on any of this. We stand ready, your Honor, to accelerate any part of the case if it should be helpful in making the decision, otherwise we'll sit back and take it in the order in which it usually comes.

Thank you, your Honor.

THE COURT: Let me take a few minutes. I want to just think about what -- it seems to me there are disadvantages in every regards. I'm not convinced on the methodology used by Mr. Furher's calculation of loss after hearing the description of it. He's a trader, really, as opposed to an investor, and I'm not sure that there aren't offsetting trades he could have made to limit his losses during the periods. If it went to January it seems to me that there are opportunities that might exist.

And as to Deka, we have this problem about the res judicata effect. We have the same problem with Fortis. According to Mr. Keller, we have the same problem with Fuhrer, if it does relate to -- if he is a citizen over there he may

not be able to recover, according to Mr. Keller. I'm not sure that's the case. I haven't heard any response to it. I didn't hear any response to that, so I take it it is the case.

And Boston's purchases, as Mr. Furher points out, were early on, quite early on in the year. And as I read the complaint, there's no allegation of recklessness at that point, they just recite the statements made. And Lothian, I was thinking of Lothian as plaintiff, but if they had been gathered into this because really the situation of the lawyers, I don't know who is the first plaintiff there. I'm very unhappy with the thought of the lawyers gathering institutions into a stable

and then whenever a class action comes up making an application putting lead counsel for the group, and yet I have to make a decision. Then I have the problem of Lothian. They bought all their stock in the foreign exchange just as Deka and Fortis did, and we don't want to lose jurisdiction.

MR. MURRAY: Excuse me, your Honor. With all the calculations of how to do the options I did get side tracked and forget to address the point of Mr. Keller about the res judicata effect on Mr. Furher, which would also affect Fortis. They're both Belgian. To my knowledge there is no decisions that address the adequacy of Belgium with regards to res judicata. As far as I know, that's open.

THE COURT: Pretty much have to be the same. All the European countries have pretty unified treatment of these things, all the ones in the E.U.

MR. MURRAY: That's not true, your Honor. In fact, if you look the Vendi opinion it distinguishes between the countries and how advanced their roles are with respect to recognizing class judgments. And some are in, some are out, Belgium was not addressed.

THE COURT: I don't think it is been addressed, I agree with you, but it's pretty apt to be the same.

MR. KELLER: If it's the same as France, which is its close neighbor, then under the Vendi opinion there would be res judicata effect.

THE COURT: You've got both the Flemish and what's the other group, the Walloons?

MR. MURRAY: I make no statement about the Flems and the Walloons, your Honor.

THE COURT: You better not; might lose a client.

MR. KELLER: Your Honor, I take --

THE COURT: They're not necessarily friendly, but you'll let your counsel talk, please, Mr. Furher.

MR. KELLER: I think it highlights -- the record at this point is very premature on a lot of these issues, but most particularly on the res judicata issue, which is an issue which is in the minority. It is an issue that most courts will defer until at least a merits decision on a motion to dismiss, class certification. One of the reasons why the group of the institutions makes no sense is because they have both domestic and foreign. But I leave that to your Honor.

THE COURT: But the problem is that all these stocks were purchased for part of Deka, Lothian and Fortis on the European exchanges.

MR. KELLER: It's still not a unique issue in the sense that it's going to be true as to one as to all. Either they're all in or they're all out. But that's not something that I think your Honor has to decide.

THE COURT: I don't know about -- yes, on that issue, but on the res judicata issue Lothian stands a little better.

MR. KELLER: That is certainly true.

THE COURT: And of course Boston is better on all those issues. And then if we do it on purchases of the exchange here, Mr. Furher certainly, according to his estimate, has far greater losses than Boston.

MR. KELLER: Your Honor, I don't believe that to be true. Even assuming Mr. Furher's calculations are correct, which we have been unable to replicate, he claims a loss of 1,080,000 and Boston has a loss of 1,016,000.

THE COURT: LIFO?

MR. KELLER: No, FIFO.

THE COURT: LIFO. It's got to be LIFO.

MR. KELLER: Okay.

THE COURT: It's got to be purchases and reliance on the market in the most recent time, it can't be purchases that go back over a long period of time. But again I have problems with him being a trader, really, or a heavy trader. And if the class period is short, Boston doesn't have the losses; right?

MR. KELLER: That's true, your Honor. If I could simply clarify --

THE COURT: If there's a motion at a certain point here, do we lose the lead plaintiff?

MR. KELLER: Your Honor, with respect to the longer class period, if I could simply comment to that, you're right, I don't think there are any allegations that -- the allegations

are the statements they were making were simply reckless at the time they were being made.

THE COURT: I don't think it even says reckless. I don't think there's any claim that those statements were reckless at the time they were made. I think I have just assumed that that must be what your claim was because that's what the law is, but it certainly doesn't say they were intentionally false. But you may be able to point it out to me.

MR. KELLER: Frankly it's replete with allegations that all the statements identified as false were made with scienter.

THE COURT: You may have a general allegation.

MR. KELLER: Beginning with paragraph 27 where it begins the class period ending February of '07, it certainly recites a series of continuing disclosures that run through May, July, September, which is certainly the disclosure that was referenced earlier, and then it really leads to --

THE COURT: I don't see anything preceding those statements or after that says reckless, they were reckless.

MR. KELLER: Beginning on page 21, the allegation is that the statements above were false and misleading when made.

THE COURT: That may be. Paragraph 57, is that it?

MR. KELLER: Beginning with paragraph 55, as a result

of defendant's false statements Ericsson Securities traded at

inflated levels, referring to the statements above. In fact, throughout the class period defendants had good visibility into the tightening demand for its products. According to the telecam analysts they were somewhat shattered. This calls into question their ability to control the company. In the loss causation section there's a general allegation that they engaged in a scheme to deceive the market and engage in a course of conduct that artificially inflated the price of securities. The allegations generally are that all of these statements, beginning with the February statements, were false and misleading, that defendants were either reckless or had --

THE COURT: Where does it say that?

MR. KELLER: Beginning with paragraph 59.

THE COURT: Okay. You have got the additional scienter allegation.

MR. KELLER: Paragraph 76, defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein or acted with recklessness.

THE COURT: You have a general scienter allegation. It does not necessarily apply to all the statements, but I will take it for what it's worth.

Anyway, I wish I could see the path that's sure to lead us through this. Let me take a break just for five minutes. You may wander too.

(Recess taken)

MR. MURRAY: May I make a point of clarification? Mr. Furher was speaking to me on a break, and with regard to your question about why he didn't do more to ameliorate his loss and engage in other trades, what he told me is the morning the bad news came out, the initial bad news in October and the stock dropped $20, it was immediately put to him. So he had no chance to do anything, he had to buy the stock. And he couldn't say I will do this trade and that trade. I know they can do fancy stuff, he didn't have a chance to do anything, it was all put to him and there was nothing left to do.

THE COURT: Well, really I guess looking at the -- thinking about the litigation going forward, it seems to me that the Court had two alternatives, and it really came down to those two as being the least likely to cause further disruption in the litigation, and each of them have a down side. I think Boston has a down side, and I'm not at all certain the earlier allegations are indicative of recklessness. And they purchased all together in that period. As the period gets shortened, which could well be, they wouldn't be a satisfactory plaintiff because all their purchases were then.

On the other hand, Mr. Furher's purchases were not in that period. I suppose the amended complaint could benefit the investigations that have been done by the Furher plaintiffs firms could -- or the attorneys for them could develop that evidence, and their losses are smaller than Mr. Furher's.

Mr. Furher, since he traded here, stands above Deka and Lothian and Fortis, it seems to me.

On the other hand, the down side is that he may well be excluded when the motion comes from defendants that according to Belgian law there weren't be res judicata on Belgian law. I don't know if that motion is coming or not, but it could. And then the other problem is that I really don't like this I guess what's become a habit by plaintiffs' counsel on these matters to gather clients together and make a joint application in an effort to get lead counselship.

So I think I come down for Mr. Furher. And I have to make a decision, I'll make it. Mr. Furher will be the lead plaintiff. So ordered.

MR. KELLER: Your Honor, if I may, would your Honor accept an in camera review of the witness statements that we have that absolutely support --

THE COURT: No, because I don't like -- I really don't like this idea of having this stable of people whom you put together to be lead counsel. I don't like that idea. That seems to be what happened here. I don't think that's what Congress intended, and I don't think it's good for the bar as a whole, but that clients make a determination on their own whether they want to be lead counsel.

MR. KELLER: Don't you think that unfairly penalizes institutions that choose to come together relying upon people

persons statute?

THE COURT: It isn't that they chose to come together, it's the manner in which they chose to come together, that's my problem. Maybe no one else will probably feel that way, it's just how I feel and other judges may feel differently.

All right. What's the next thing to do? Set a date for what?

MR. KRAMER: Your Honor, we have a stipulation and order in the case that I believe predates either of these firms with the initial firm which provided for a schedule for going forward which your Honor has already signed, and it provides 60 days for after your decision on lead plaintiff for an amended complaint, then to be followed with defendant's response 60 days later. That's the current schedule in the case and we would be willing to abide by it.

THE COURT: Does that make sense or should it be shortened?

MR. KRAMER: We would be delighted with a shorter schedule as well, your Honor.

MR. MURRAY: Your Honor, since Mr. Furher had not filed the initial complaint, was simply movant, I would like to use all of those 60 days at least to prepare his complaint. I am willing to discuss a briefing schedule of a shorter nature than 60 days if necessary.

MR. KRAMER: Your Honor, I would be willing to shorten

both periods but I think it would be inappropriate for plaintiffs' counsel to insist on the full date and to shorten my time.

THE COURT: How often I have heard that.

MR. KRAMER: So I can go either way but I think it

should be the same.

MR. MURRAY: Then we would like the 60, 60, and we would like 30 days for opposition briefing, since I assume they're moving, not answering.

THE COURT: All right. Any time you can shorten matters let me know.

MR. MURRAY: We'll try to do so, your Honor.

MR. KRAMER: Thank you, your Honor.

MR. MURRAY: Thank you, your Honor.

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